IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 03.10.2007

Coram

The Honourable Mr. Justice M. CHOCKALINGAM

W.P. Nos.11663 to 11670 of 2004

J. Daniel Nallathambi ... Petitioner in WP.11663/04
S. Florance Shanthakumari ... Petitioner in WP.11664/04
N. Baby Saroja ... Petitioner in WP.11665/04
R. Suvi Gnana Deepam ... Petitioner in WP.11666/04
B. Jeya ... Petitioner in WP.11667/04
K. Lakshmi ... Petitioner in WP.11668/04
G. Jeya Seeli ... Petitioner in WP.11669/04
A. Sugunadevi ... Petitioner in WP.11670/04

..vs..

1. The Govt. of Tamil Nadu,
rep. by its Secretary,
School Education Department,
Fort St. George,
Chennai - 600 009.

2. The Director of Elementary
Education,
College Road,
Chennai - 600 006.

3. The District Elementary
Educational Officer,
Tirunelveli, Tirunelveli Dist.

...Respondents 1 to 3
in all Writ Petitions

The Correspondent,
TDTA Middle School,
Araikulam,
Tirunelveli District. ...5th respondent in
WP.11663/04, WP.No.11667/04

The Correspondent,
STC, Branch Uppar Middle School,
Tirunelveli Town
Tirunelveli District. ...5th respondent in
WP.11664/04

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The Correspondent,
CMS, Mary Adren Middle School,
Palayamkottai,
Tirunelveli District. ...5th respondent in
WP.11665/04

The Correspondent,
STC Branch, Middle School,
Ambasamudram,
Tirunelveli District. ...5th respondent in
WP.11666/04

The Correspondent,
TDTA, Middle School,
Devarkulam, Malanealithanallor
Sankarankoil Tk,
Tirunelveli District. ...5th respondent in
WP.11668/04

The Correspondent,
STC Middle School,
Sindupoondurai
Tirunelveli District. ...5th respondent in
WP.11669/04

The Correspondent,
TDTA, Middle School,
Arasadi Palam, Tirunelveli Town,
Tirunelveli District. ...5th respondent in
WP.No.11670/04

The Assistant Elementary Educational Officer,
Palayankottai (Urban),
Tirunelveli District. ...4th respondent in
WP.No.11665/04

The Assistant Elementary
Educational Officer,
Ambasamundram
Tirunelveli District. ...4th respondent in
WP.No.11666/04

The Assistant Elementary
Educational Officer,
Palayam kottai (Rural)
Tirunelveli District. ...4th respondent in
WP.No.11663/04 and WP.11667/04

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The Assistant Elementary
Educational Officer,
Melanealithanallor,
Sankarankoil Tk,
Tirunelveli. ...4th respondent in
WP.No.11668/04

The Assistant Elementary
Educational Officer,
Tirunelveli
Tirunelveli District. ...4th respondent in
WP.Nos.11664/04
and 11669/04

The Assistant Elementary
Educational Officer,
Tirunelveli (Urban)
Tirunelveli District. ...4th respondent in
WP.No.11670/04

For Petitioner : Mr. K. Vijayakumar

For Respondents : Mr. V. Arun,
Addl. Govt. Pleader

COMMON ORDER

In all these writ petitions, the petitioners, who are Headmasters and Headmistresses of different middle schools under the fourth respondent-Management, have sought for a writ of certiorarified mandamus, to call for the records relating to the order of the second respondent passed in Na.Ka.No.39470/EG4/2003 dated 27.11.2003 and the consequential orders passed by the fourth respondent in Na.Ka.No.294/B1/2004 dated 23.3.2004, dated 18.3.2004, in Na.Ka.No.A1/2004 dated 31.1.2004, in Na.Ka.No.1624/B1/2003 dated 9.3.2004, in Na.Ka.No.294/B1/2004 dated 23.3.2004, in Na.Ka.No.1535/A1/03 dated 6.2.2004, dated 17.3.2004 (W.P. Nos.11663 to 11669 of 2004) respectively and quash the same insofar as direction to respondents 3 and 4 to recover the Middle School Headmaster/Headmistress's pay paid to the petitioners prior to the completion of 5 years of teaching experience alone is concerned and the consequential re fixation of the petitioners' Middle School Headmaster/Headmistress pay taking note of completion of 5 years of teaching experience only from 20.3.1989, 15.6.1989, 15.3.1990, 1.10.1990, 30.9.1987, 1.7.1986, 1.6.1987, 1.6.1992 respectively are concerned and consequently

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direct the respondents to continuously pay the petitioners' pay as Middle School Headmaster/Headmistress pay from 29.8.1986, 15.6.1984, 15.3.1985, 2.6.1987, 3.6.1986, 4.6.1985 , 13.10.1981 and 1.6.1987 respectively with all other benefits.

2. Affidavits filed in support of the writ petitions and counter affidavit are perused. The Court heard the learned counsel appearing on either side.

3. Concededly, all these petitioners were appointed as Secondary Grade Teachers on different dates in the fifth respondent-Management and the same was also approved. The petitioners were also paid salary by the department. Thereafter, they were promoted as Middle School Headmasters and Headmistresses on different dates. It is also not in controversy that as per G.O.Ms.No.1297 Education dated 27.7.1979, the promotion of all these petitioners as Headmasters and Headmistresses was also approved by the third respondent without any condition whatsoever. The scale of pay was fixed originally and the selection grade Headmaster's scale of pay was also given to them. Now the petitioners are working as Headmasters and Headmistresses in different schools in the fifth respondent-Management.

4. While the matter stood thus, the second respondent has issued instructions to his subordinates viz. third and fourth respondents that the salary paid earlier to the primary and middle school Headmasters and Headmistresses, who have been promoted without five years of teaching experience as recognized under Rule 15 Annexure V of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 without exemption from the Government, shall be recovered and proposals shall be submitted to the Government for the grant of exemption and from 9.9.2002, no one shall be appointed without 5 years of teaching experience as primary/middle school Headmasters/ Headmistresses.

5. Following the instructions issued by the second respondent, the fourth respondent issued orders in Na.Ka.No.294/B1/2004 dated 23.3.2004, dated 18.3.2004, in Na.Ka.No.A1/2004 dated 31.1.2004, in Na.Ka.No.1624/B1/2003 dated 9.3.2004, in Na.Ka.No.294/B1/2004 dated 23.3.2004, in Na.Ka.No.1535/A1/03 dated 6.2.2004, dated 17.3.2004 respectively and refixed the scale of pay without considering the earlier services rendered by the petitioners and ordered recovery of salary and reduction of salary. Under such circumstances, the petitioners have challenged the aforesaid orders in these writ petitions.

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6. In support of the writ petitions, learned counsel would submit that these petitioners were originally appointed as Secondary Grade Teachers and the same was approved by the third respondent. They were also promoted as Middle School Headmasters/Headmistresses in different schools under the fifth respondent-Management. When the same was approved, no condition was imposed and they have been still working. Under such circumstances, once the approval was granted to the promotion of the petitioners and they have been serving, there is no question of passing the orders under challenge. The respondents 1 to 4 have not sent any communication to the fifth respondent-Management to apply for exemption for the persons who were promoted as Middle School Headmasters/Headmistresses without five years of teaching experience.

7. Learned counsel would further add that once no condition was imposed at the time of approval of promotion and also there is no communication or letter seeking for exemption, the order what is now passed does not have any reason and the same has to be set aside. Learned counsel brought to the notice of this Court an order passed by this Court in such a situation on 7.11.2002 in W.P. No.2724 of 1998.

8. The Court heard the learned counsel for the respondents on the above contentions.

9. It is not in controversy that these petitioners, who were originally appointed as Secondary Grade Teachers in the fifth respondent-Management, were subsequently promoted as Middle School Headmasters/Headmistresses and the same was also approved by the third respondent. At the time of approval of their promotion, no condition was imposed that they should possess five years of teaching experience. As rightly pointed out by the learned counsel for the petitioners, at any point of time, in the past, no direction was issued by the respondent-department to the fifth respondent-Management to seek for exemption.

10. Under such circumstances, once the petitioners have served in the post as Headmasters/Headmistresses and further their promotion was also approved without any condition whatsoever, the Court is at a loss to understand how this condition was imposed, which was not originally imposed, for the purpose of making recovery of the salary. The salary originally paid as per G.O.Ms.No.97 dated 5.7.2001 issued by the first respondent is also granted regularization in such matters. If to be so, in equity, the amount already paid to the petitioners cannot now be recovered.

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11. Even assuming that these petitioners were not eligible to be promoted as Headmasters/Headmistresses at the relevant time, only after the approval of their promotion, they were working in the said capacity. Under the circumstances, equity would require that the amount of salary payable for the said post, which shall be paid, was accordingly paid. Hence the question of recovering the same cannot be permitted, irrespective of the fact, whether the petitioners are eligible for the higher salary or not. Hence the orders passed by the respondents are quashed and the writ petitions are ordered accordingly. Consequently, the connected W.P.M.Ps. and W.V.M.P. are closed. No costs.

ssa.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary,
   The Govt. of Tamil Nadu,
   School Education Department,
   Fort St. George,
   Chennai - 600 009.

2. The Director of Elementary
   Education,
   College Road,
   Chennai - 600 006.

3. The District Elementary
   Educational Officer,
   Tirunelveli, Tirunelveli Dist.

4. The Assistant Elementary Educational Officer,
   Palayankottai (Urban),
   Tirunelveli District.

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5. The Assistant Elementary
Educational Officer,
Ambasamundram
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7. The Assistant Elementary
Educational Officer,
Melanealithanallor,
Sankarankoil Tk,
Tirunelveli.

8. The Assistant Elementary
Educational Officer,
Tirunelveli
Tirunelveli District.

9. The Assistant Elementary
Educational Officer,
Tirunelveli (Urban)
Tirunelveli District.

10. The Government Pleader,
High Court, Madras 104.

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